

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554  
NOV 13 2003

OFFICE OF  
MANAGING DIRECTOR

Robert A. Mansbach  
Lockheed Martin Global  
Telecommunications  
6560 Rock Spring Drive  
Bethesda, MD 20817

Re: COMSAT Corporation request for Reduction of FY  
2001, 2000, and 1998 Regulatory Fees  
Fee Control Nos. 0109268835483010 [et al]

Dear Mr. Mansbach:

This is in response to requests by COMSAT Corporation for a reduction in its regulatory fees for fiscal years (FY) 2001, 2000, and 1998.

First, in a letter, dated September 24, 2001, as supplemented by ex parte presentations dated May 6, 2002, October 7, 2002, and July 3, 2003. COMSAT requests a reduction of its regulatory fee for FY 2001.<sup>1</sup> COMSAT indicates that, pursuant to Assessment and Collection of Regulatory Fees for Fiscal Year 2001, 16 FCC Rcd 13525 (2001), recon. denied, FCC 03-74, (Apr. 9, 2003), it has submitted \$1,668,125 in fees for FY 2001, corresponding to \$98,125 for each of the 17 geostationary satellites that COMSAT operated as a signatory to INTELSAT.

Second, in an ex parte presentation, dated May 6, 2002, COMSAT seeks a reduction of its regulatory fee for FY 2000.<sup>2</sup> For that year, pursuant to Assessment and Collection of Regulatory Fees for Fiscal Year 2000, 15 FCC Rcd 14478 (2000), COMSAT paid \$1,609,050 in fees, corresponding to \$94,650 for each of the 17 satellites.

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<sup>1</sup> Letter from Robert A. Mansbach to Andrew S. Fishel (Sept. 24, 2001); Letter from Lawrence W. Secrest, III to Ms. Marlene Dortch, Secretary (May 6, 2002); Letter from Lawrence W. Secrest, III to Ms. Marlene Dortch, Secretary (Oct. 7, 2002), E-mail from Helgi Walker to Bryan Tramont (Jul 3, 2003).

<sup>2</sup> Letter from Lawrence W. Secrest, III to Ms. Marlene Dortch, Secretary (May 6, 2002). We have not in the past deemed requests filed long after the close of the fiscal year in question to be timely. In a June 16, 2003 e-mail communication, however, COMSAT argues that, under the particular circumstances of this case, its request for FY 2000 should nevertheless be considered timely. E-mail from Rosemary Harold to David Senzel (Jun. 16, 2003). We need not resolve this question. Even if were to treat COMSAT's request as timely, we would deny it for the reasons set forth below.

Third, in a petition, filed July 14, 2003, COMSAT requests a reduction of its regulatory fee for FY 1998. COMSAT, pursuant to Assessment and Collection of Regulatory Fees for Fiscal Year 1998, 18 FCC Rcd 6944 (2003), appeal pending sub nom. Panamsat v. FCC, Case No. 03-1133 (D.C. Cir. May 9, 2003), submitted \$1,876,800 in fees for FY 1998, corresponding to \$78, 200 for each of 24 geostationary satellites.<sup>3</sup>

For each of these three fiscal years, COMSAT's fees amounted to approximately 26 percent of all fees paid by geostationary satellite operators. As provided by section 9(g) of the Communications Act (47 U.S.C. § 159(g)), the fee is assessed on a per satellite basis, and COMSAT's satellites comprised approximately 26 percent of the geostationary satellites deemed in operation and subject to fees for those years.<sup>4</sup>

COMSAT's initial 2001 request made two arguments for reducing the fee. First, COMSAT asserted that its fee should be reduced to zero. COMSAT stated that: "Because INTELSAT space stations were not regulated by the FCC pursuant to Part 25 of the Commission's Rules or otherwise, INTELSAT space stations were not subject to Section 9 regulatory fees." September 24 Letter at 2. Second, COMSAT contended that the fee should be reduced to reflect its percentage of use of the INTELSAT system. COMSAT indicated that it used only about 17 percent of INTELSAT space segment capacity during FY 2001 (and a like amount in other years), that it did not own the space stations or direct their operations, and that it did not possess the valuable rights typically enjoyed by licensees. COMSAT's subsequent submissions do not, however, pursue these arguments, which were subsequently rejected by the Court of Appeals.

Specifically, COMSAT's argument that it should not be assessed a section 9 fee because it is not regulated or licensed by the Commission was rejected by the Commission in its FY 2000 fee order. Assessment and Collection of Fees for Fiscal Year 2000, 15 FCC Rcd 14478, 14485-89 ¶¶ 17-24 (2000), aff'd sub nom. COMSAT Corp. v. FCC, 283 F.3d 344 (D.C. Cir. 2002). The court of appeals subsequently affirmed that determination, and we shall not further entertain a legal issue that has already been resolved.

Similarly, the Commission, in its FY 2000 fee order, rejected COMSAT's proposition that its fee should be discounted based on the degree of its usage of the INTELSAT system, as opposed to the number of satellites involved. Assessment and Collection of Fees for Fiscal Year 2000, 15 FCC Rcd 14478, 14490 ¶ 26 (2000), aff'd sub nom. COMSAT Corp. v. FCC, 283 F.3d 344 (D.C. Cir. 2002). The Commission pointed out that it had previously rejected proposals to base the space station fee on the number of transponders used rather than the number of space segments. Moreover, the Commission held that Columbia Communications Corp., 14 FCC Rcd 1122 (1999), in which the

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<sup>3</sup> COMSAT paid this fee following the remand of Panamsat v. FCC, 198 F.3d 890 (D.C. Cir. 1999), in which Panamsat Corporation successfully challenged the Commission's prior policy of treating COMSAT as exempt from the geostationary satellite fee.

<sup>4</sup> Specifically, COMSAT's satellites accounted for 17 of 66 satellites in FY 2001, 17 of 63.5 satellites for FY 2000, and 24 of 94 satellites for FY 1998

Commission granted a partial waiver of a satellite operator's fees under unique circumstances, should not be read as endorsing a utilization-based approach generally. The Court of Appeals likewise upheld the determination that the fee should not be based on transponder use, and we will therefore not revisit that issue.

COMSAT does, however, raise additional arguments for reducing the fee, relying on dictum contained in the court's decision in COMSAT Corp. v. FCC, 283 F.3d 344, 349 (D.C. Cir. 2002). The court, in upholding the imposition of regulatory fees on COMSAT, observed (with respect to the fee imposed in FY 2000):

... [W]e do not suggest that the fees imposed on COMSAT were well apportioned. Indeed, the \$1.6 million in fees assessed to COMSAT seem to bear no relation to the signatory-related costs that the Commission identified COMSAT as having created and that it has said it wishes to recover. Signatory-related costs apparently amounted to only \$233,425 in 1996, [footnote omitted] and although the record lacks reported figures for 2000, an extrapolation on the basis of the change in the regular fee per satellite would yield an estimate for Intelsat signatory-related costs in 2000 of about \$442,000, only about a quarter of the fees actually assessed. [footnote omitted]. . . .

We do not reach this issue, however, because it was not raised on this appeal. Indeed it appears that the Commission was and perhaps remains willing to consider a request for a fee reduction on this ground. . . . .

COMSAT argues that the court's dictum should be seen as warranting a reduction<sup>5</sup> because to do so would reflect the proper application of section 9 to the facts of this case. According to COMSAT, because section 9 authorizes the Commission to assess regulatory fees "to recover the costs" of regulatory activities<sup>6</sup>, the Commission may not subject COMSAT to a fee in excess of the costs immediately associated with COMSAT's signatory-related activities. COMSAT interprets the court's dictum as reflecting this interpretation of section 9.

In further support of this argument, COMSAT's submissions cite data obtained from the Commission under the Freedom of Information Act (FOIA), which, COMSAT believes, indicate that the cost of regulating its activities amounted to \$370,476 for FY 2001 and \$564,082 for FY 2000.<sup>7</sup> The figures were derived from a document entitled "Cost Regulatory Fee Summary Report, S/E Rollup by Non Reimbursable Projects." This document reflects a partial accounting of regulatory costs based on time sheets routinely submitted by employees under the category "Signatory to Inmarsat and Intelsat." It was provided as responsive to COMSAT's requests for documents containing or reflecting

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<sup>5</sup> Specifically, the court's methodology results in estimated signatory costs attributable to COMSAT of \$475,991 for FY 2001, \$441,773 for FY 2000, and \$593,604 for FY 1998.

<sup>6</sup> "The Commission, in accordance with this section, shall assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission . . . . 47 U.S.C. § 159(a)(1).

<sup>7</sup> COMSAT filed a similar request for data concerning FY 1998.

information regarding the Commission's determination of geostationary satellite fees, as containing relevant data. Accordingly, COMSAT argues that section 9 of the Communications Act requires that the fee should be reduced to that figure.

The Commission may waive, reduce, or defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby. See 47 U.S.C. § 159(d); 47 C.F.R. § 1166; Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5344 ¶ 29 (1994), recon. granted in part, 10 FCC Rcd 12759, 12761 ¶ 12 (1995) (regulatory fees may be waived, deferred, or reduced on a case-by-case basis in extraordinary and compelling circumstances upon a clear showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs). We conclude that COMSAT has supplied no grounds warranting a reduction.

First, we conclude that there is no justification for COMSAT's suggestion that the Court of Appeals decision or section 9 of the Communications Act mandates that COMSAT should be liable only for reimbursing the costs of its signatory-related activities, instead of the proportionate share of total satellite costs based on the number of its satellites. The Court of Appeals squarely affirmed the Commission's FY 2000 fee order, which concluded that: ". . . Comsat should pay a proportionate share of fees applicable to holders of Title III authorizations to launch and operate geosynchronous space stations." Id. at 14489 ¶ 24. In this regard, the Commission's Brief defined the relevant issue on appeal as: "The Commission Properly Determined That Comsat Should Pay A Proportionate Share of The Satellite Regulatory Costs Which Include Costs for Intelsat Signatory Activities." COMSAT Corp. v. FCC, Case No. 00-1448 (D.C. Cir.), Brief for Respondents at 32.

We do not read the Court of Appeal's dictum as qualifying the court's affirmance of the holding that COMSAT is liable for its proportionate share of total satellite costs to require the Commission to limit COMSAT'S fee to signatory-related costs or to raise an expectation that the fee would be so limited. The court clearly stated: "We do not reach this issue . . . because it was not raised on this appeal." COMSAT Corp. v. FCC, 283 F.3d at 349. At most, the court merely speculated that the Commission "perhaps remains willing to consider a request for a fee reduction on this ground." Id. The Commission, however, gave no indication that it would grant such a request. On the contrary, the Commission said explicitly in the FY 2000 fee order: "We express no view in this rulemaking proceeding whether such a reduction in fees should be granted." Assessment and Collection of Fees for Fiscal Year 2000, 15 FCC Rcd at 14490 ¶ 27.

In a prior case, the court specifically ruled on the question of whether the Commission could, consistent with section 9, segregate COMSAT's signatory activities from satellite activities generally and create a signatory fee uniquely applicable to COMSAT. The court ruled that such an approach was invalid because the fee categories specified by Congress in section 9 did not make this distinction and the creation of a novel category was not within the scope of permitted amendments authorized by section 9. COMSAT Corp. v. FCC, 114 F.3d 223 (D.C. Cir. 1997). We see no justification for using the fee reduction process to achieve the same result.

Moreover, we disagree with COMSAT's interpretation of the "fees to recover cost" language. Section 9 requires the Commission to establish fees that will, in the aggregate, recover its regulatory costs and meet the revenue goals established by Congress. In establishing fees, the Commission may consider, in addition to the staff costs of specific bureaus, the benefits provided to the payor of the fee, "including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest." 47 U.S.C. § 159(b)(1)(A). Fees also reflect indirect costs, such as the cost of overhead functions, support costs, and contractual costs related to regulatory oversight but not attributable to direct services to FCC payees. See Assessment and Collection of Fees for Fiscal Year 1998, 13 FCC Rcd 19820, 19826 ¶ 16 (1998). Additionally, regulatory fees recover costs attributable to regulatees that Congress exempted entirely from fees. *Id.* at 19826 ¶ 17. And, finally, the amount of the fee charged per satellite from year to year depends upon the total number of satellites that the Commission expects to be in operation and available to meet the total satellite revenue requirement in a given fiscal year.

Further, COMSAT does not challenge the total amount of geostationary satellite fees that the Commission established for FYs 2001, 2000, and 1998 pursuant to these principles. Nor does COMSAT deny that section 9 provides that the fee is to be allocated among geostationary operators according to the number of satellites each operates. COMSAT, nevertheless, insists that the fee should not be applied on a per satellite basis if it would result in a situation in which the total fees payable by an entity did not correspond to the costs specifically associated with that entity.

We disagree with this contention. Congress determined that satellite regulatory fees specified in section 9 should be allocated based on the number of satellites in operation. See Schedule of Regulatory Fees, 47 U.S.C. § 9(g). Under this statutory scheme, therefore, Congress did not require that there be a dollar-for-dollar relationship between the actual regulatory costs caused by specific satellite licensees and the fees that should be charged to them. A licensee with a single satellite in operation, for example, could well require the Commission to expend significantly more staff and other resources in enforcement, policy, and rulemaking activities than a licensee that owns many more satellites. The statutory satellite fees are thus unlike the Commission's earlier signatory fee, which applied only to a single entity, COMSAT, and was designed to recover the specific costs of regulating that entity. In contrast, satellite regulatory fees, as established by Congress, are designed to recover the aggregate costs of regulating all satellites and to allocate the burden based on the number of operational satellites. This is fully consistent with the congressional policy reflected in section 9(b)(1)(A) that fees may be based on service area coverage and other public interest factors.<sup>8</sup> We therefore see no reason why

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<sup>8</sup> We note that in establishing section 9 regulatory fees, Congress in many other contexts uses a calculus that assesses fees on a basis independent of the costs associated with a particular entity. For example, the fee schedule provides for higher fees for television stations in larger markets and for carriers and cable systems that have larger numbers of subscribers, all without regard to the specific costs imposed by these entities.

the fees COMSAT pays should depart from the methodology Congress intended to apply to satellite operators or should not correspond to the number of satellites COMSAT uses.

COMSAT also relies on cases, such as NCTA v. United States, 415 U.S. 336 (1974) and Federal Power Commission v. New England Power Co., 415 U.S. 345 (1974), which held that fees established under the Independent Offices Appropriations Act (IOAA) must be based on the costs and value to the recipient of government services so as not to raise issues as to whether the fees were improperly delegated "taxes."

Commission regulatory fees are not, however, established under IOAA but are fees specifically set by Congress under an entirely different statutory scheme. See Lockheed Martin Corp., 16 FCC Rcd 12805, 12806-07 n.11 (2001). The Supreme Court moreover, subsequently clarified the applicability of NCTA and New England Power to similar agency fees and held that such fees need not be purely cost based. The Supreme Court rejected the idea that such non-cost based fees were unconstitutional delegations of taxing authority, holding that:

*. . . National Cable Television and New England Power stand only for the proposition that Congress must indicate clearly its intention to delegate to the Executive the discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties by imposing additional financial burdens whether characterized as "fees" or "taxes" on those parties. . . .*

Skinner v. Mid-America Pipeline, 490 U.S. 212, 224 (1989). In responding to identical arguments raised by COMSAT in the FY 1995 rulemaking, the Commission thus observed that:

Skinner . . . bars any interpretation . . . that would limit Congress to allowing agencies to set regulatory fees only in amounts that reflect services received by the regulated entities. Skinner also stated that a congressional delegation of authority to raise funds was proper where Congress provides sufficient guidance to the collecting agency concerning the identity of the entities subject to the fee, the purpose for which the funds may be used, the manner in which the fees are to be established, and the aggregate amount of the fees to be collected. . . .

Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 10 FCC Rcd 13512, 13521 ¶ 19 (1995). See also Assessment and Collection of Regulatory Fees for Fiscal Year 1997, 12 FCC Rcd 17161, 17171 ¶ 27 (1997) ("We again reject the arguments that our proposed fees are inconsistent with the statute or otherwise unlawful because they are not completely cost-based or do not reflect the benefits received by entities subject to the fee payment.").

We further note that section 9 does not run afoul of the Origination Clause of the Constitution, which requires that "[a]ll Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills." Section 9 is part of the Omnibus Budget Reconciliation Act of 1993, which

was introduced in the House on May 25, 1993 (H.R. 2264). Section 9 itself was added in conference but also had its genesis in a "virtually identical" provision in a predecessor bill that the House, though not the Senate, passed in the previous 102d Congress, H.R. 1674. See House Conf. Rep. No. 213, 103rd Cong., 1<sup>st</sup> Sess. 1188 ("...the fee provisions contained in this section are virtually identical to those contained in H.R. 1674, which passed the House in 1991. To the extent applicable, the appropriate provisions of the House Report (H.R.Rep 102-207) are incorporated herein by reference.") Further, the House was the first chamber to pass H.R. 2264 as reported out of Conference, including the section 9 regulatory fee provisions. In any event, section 9 is not a "bill for raising revenue" because it establishes fees to support a specific government program and does not raise revenue to support government generally. See United States v. Munoz-Flores, 495 U.S. 385, 397-98 (1990); see also "Policies of the Chair," Congressional Record, vol. 137, Jan. 3, 1991, p. 66 (defining "non-revenue receipts" not subject to the Origination Clause).

We thus find no justification for reducing COMSAT's fees merely because the portion of total geostationary fees attributable to COMSAT on a per satellite basis may not match the portion attributable under a cost based approach. The Court of Appeals affirmed the Commission's conclusion that COMSAT should be deemed liable for the same satellite fee applicable to geostationary satellite operators generally. The court rejected the Commission's previous attempt to establish a unique fee for COMSAT based specifically on signatory costs. Thus, the assessment of the satellite fee against COMSAT on a per satellite basis fully complies with section 9, as interpreted by the court and the Commission. Moreover, there is no statutory or constitutional requirement that section 9 must be applied so that COMSAT's fee corresponds to its signatory costs.

Because COMSAT has not raised circumstances, such as financial hardship, that give rise to countervailing public interest factors that would warrant reducing a lawful fee, we see no justification for granting the relief COMSAT requests. The Commission's long-standing policy regarding fee reductions has been consistent with the approach we take here. In considering an analogous issue in connection with section 8 application fees, the Commission stated:

... one of the justifications for fees is to allow the Commission to recover its processing costs.[Footnote omitted] Because the Commission incurs a cost regardless of the final result to the applicant, we proposed to Congress that these fixed processing costs should be recovered in equal amounts from each applicant through fees. We can find no justification in the statute or its legislative history for apportioning fees according to the actual work done on any particular application.

Establishment of a Fee Collection Program, 2 FCC Rcd 947, 949 ¶ 14 (1987). See also Establishment of a Fee Collection Program, 3 FCC Rcd 5987 ¶ 6 (1988) ("... in any particular case, a determination based on actual costs incurred in the processing of an application would unduly burden the administration of the fee program"). The Commission has therefore denied waiver and fee reduction requests based on the

argument that the fee assessed a particular payee exceeded the costs incurred by that payee. See, e.g., Lockheed Martin Corp., 16 FCC Rcd 12805, 12807 ¶ 5 (2001). See also Sirius Satellite Radio, Inc., FCC 03-135 (Jun. 9, 2003) at ¶ 11 (“...our fee structure is designed such that all licensees who build a particular type of system pay the same fee”). We see no reason to treat section 9 fee waivers differently, since they are premised on analogous principles.

In view of the foregoing, COMSAT has failed to establish a compelling case for relief. Therefore, its requests for a reduction of the regulatory fee for FYs 2001, 2000, and 1998 are denied.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



for Mark A. Reger  
Chief Financial Officer

Copy to:  
Lawrence W. Secrest, III  
Wiley Rein & Fielding LLP  
1776 K Street, NW  
Washington, DC 20006



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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 ) Bill No. FY03RROG01  
COMSAT Corporation FY 1998 )  
Regulatory Fees )

To: The Managing Director

**PETITION FOR REDUCTION AND REFUND OF REGULATORY FEES**

By their undersigned attorneys and pursuant to Section 9(d) of the Communications Act, 47 U.S.C. § 159(d), and Rule 1.1166 of the Commission's rules, 47 C.F.R. § 1.1166, Lockheed Martin Corporation and its subsidiary COMSAT Corporation (collectively "COMSAT") hereby petition the Commission for reduction of the amount of Section 9 "space station" regulatory fees assessed against COMSAT for Fiscal Year ("FY") 1998 and for a consequent refund of excessive fees paid. Under separate cover, COMSAT is submitting under protest a payment of \$1,876,800 in response to the bill for FY 1998 presented by letter dated June 13, 2003 from the Revenue and Receivables Operations Group of the Office of the Managing Director ("OMD"). See FCC Bill No. FY03RROG01 (dated June 13, 2003) (the "June bill").<sup>1</sup>

The Commission is authorized to reduce a regulatory fee assessment where good cause to do so is shown 47 U.S.C. § 159(d); *see also* 47 C.F.R. § 1.1166. The fees assessed via the June bill are significantly in excess of the actual costs that the Commission incurred in regulating COMSAT in FY 1998. Because this assessment "seem[s] to bear no relation" to the costs that the agency has consistently identified through the years as that which it wishes to recover,

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<sup>1</sup> Payment of the assessed fees does not constitute a waiver or relinquishment of COMSAT's rights to pursue and obtain a refund of monies paid. See 47 C.F.R. § 1.1166(d)

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*COMSAT Corp v. FCC*, 283 F 3d 344 (D.C. Cir. 2002) (“*COMSAT I*”), good cause exists to reduce the FY 1998 fees to a level commensurate with those costs. Indeed, as discussed below, the Commission lacks authority to impose a fee on COMSAT that is not reasonably related to the costs the agency can identify for regulating the company in a given fiscal year. Granting the reduction and refund requested here would therefore eliminate any doubts as to the legality of the FY 1998 fee assessment under *COMSAT II*.

The Commission’s records will reflect that the issue of imposing appropriate regulatory fees on COMSAT in connection with its usage of satellites owned by the former intergovernmental organization (“IGO”) known as INTELSAT (now privatized as Intelsat, Ltd.) has a complicated history.<sup>2</sup> The Commission has repeatedly identified the costs of regulating COMSAT in its role as INTELSAT signatory—*i.e.*, its function as the U.S. representative to INTELSAT and its usage of INTELSAT satellites to serve U.S. customers—as the costs that it seeks to recover through these regulatory fees.<sup>3</sup> Yet because the Commission is barred by law from assessing a “signatory” regulatory fee against COMSAT,<sup>4</sup> the agency has sought in recent years to recoup its costs by assessing fees against the company through the category of space station fees. That category, however, was designed to assess fees to recover the costs of regulating U.S. satellite licensees. The activities of satellite licensees generate a completely different type of costs than did the signatory activities of COMSAT. It is not surprising, therefore, that the FY 1998 fee assessment against COMSAT, which was calculated pursuant to a

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<sup>2</sup> See *COMSAT Corp v. FCC*, 114 F.3d 223 (D.C. Cir. 1997) (“*COMSAT I*”); *PanAmSat Corp v. FCC*, 198 F 3d 890 (D.C. Cir. 1999), *COMSAT II*, 283 F 3d 344

<sup>3</sup> See *COMSAT II*, 283 F.3d at 349, *id.* at 347 (citing *Assessment and Collection of Regulatory Fees for Fiscal Year 2000*, 15 FCC Rcd 14478, 14485-90 (2000)); *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, 16 FCC Rcd 13525, 13534 (2001); see also *Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, 11 FCC Rcd 18774, 18787-91 (1996) (discussing same costs under rubric of “signatory fee”).

<sup>4</sup> *COMSAT I*, 114 F 3d at 227-28

methodology that combined COMSAT's signatory-related costs with the general costs of regulating space stations and then spread those costs over all space station licensees and COMSAT, bears no reasonable relationship to the unique costs that the Commission actually incurred in regulating COMSAT.

The Commission should reduce the COMSAT fee assessment for FY 1998 to a level commensurate with its identifiable costs.<sup>5</sup> Doing so for that fiscal year—as with the other fiscal years for which COMSAT is seeking similar fee reductions and refunds—will ensure that the agency does not exceed its authority under Section 9.<sup>6</sup> That provision authorizes the Commission to “assess and collect regulatory fees *to recover the costs of* ...enforcement activities, policy and rulemaking activities, user information services, and international activities.”<sup>7</sup> Section 9 clearly defines regulatory fees as a cost-recovery mechanism, or a means of obtaining compensation for costs actually incurred. It is not a mechanism for generating revenues.

While there is no case law defining the precise boundaries of “fees to recover costs” under Section 9, the Commission should be guided by the substantial and persuasive precedent relating to regulatory fees imposed under the Independent Offices Appropriations Act (“IOAA”), 31 U.S.C. ¶ 9701 (establishing “fees and charges for Government services and things of value.”)

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<sup>5</sup> COMSAT is contemporaneously filing a request under the Freedom of Information Act to obtain Commission data concerning the costs of regulating the company's usage of the INTELSAT satellite system in Fiscal Years 1998 and 1999. See Letter of Rosemary C. Harold, Esq., to Andrew S. Fishel, FOIA Officer (dated July 14, 2003) (copy attached)

<sup>6</sup> Requests are pending for reduction of the space station regulatory fees assessed against COMSAT for FY 2000 and FY 2001. See Letter of Robert A. Mansbach, Asst. General Counsel, COMSAT Corporation, to Andrew S. Fishel, Managing Director (dated Sept. 24, 2001), Letter of Lawrence W. Secrest, III, Esq., to Marlene Dortch, Secretary, MD Dkt No. 00-58 (dated May 6, 2002), Letter of Lawrence W. Secrest, III, Esq., to Marlene Dortch, Secretary, MD Dkt No. 01-76 (dated May 6, 2002)

<sup>7</sup> 47 U.S.C. 159(a)(1)(emphasis added)

Recovery of fees under the IOAA is governed by two Supreme Court cases. In *NCTA v. United States*, 415 U.S. 336 (1974), the Court reversed the FCC's cable regulatory structure and held that the recovery of fees under IOAA must be limited to the benefit received by the regulated entity, not the general social benefit of the regulation.<sup>8</sup> In *Federal Power Comm'n v. New England Power Co.*, 415 U.S. 345 (1974), the Court held that fees under the IOAA must be based on the cost of specific services rendered to specific parties.<sup>9</sup> Following these decisions, the U.S. Court of Appeals for the D.C. Circuit held that a "fee may not exceed the agency's costs of providing the service."<sup>10</sup> Although courts "do not demand precise equality," a fee must be "reasonably related to the cost of the services that benefit the individual recipients who are being charged."<sup>11</sup>

Section 9, unlike the IOAA, explicitly provides that the Commission is authorized to collect "fees to recover costs." If cases under the IOAA limited fees to cost recovery, then there should be no question that fees under Section 9 must be tied to costs, as the plain terms of the statute provide. Any other reading of the term "fee" would implicate the power to tax, which is traditionally reserved to Congress, and thus create problems of constitutional dimension.<sup>12</sup>

When the validity of the space station regulatory fee assessed against COMSAT for FY 2000 was before the D.C. Circuit, the court questioned the relationship between the fees and costs. In *COMSAT II*, the D.C. Circuit determined that the Commission was authorized to impose fees on COMSAT for its use of the INTELSAT facilities, but it went out of its way to

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<sup>8</sup> 415 U.S. at 341

<sup>9</sup> 415 U.S. at 349

<sup>10</sup> *Central & Southern Motor Freight Tariff Ass'n v. ICC*, 777 F.2d 722, 729 (1985).

<sup>11</sup> *NCTA v. FCC*, 554 F.2d 1094, 1108 (D.C. Cir. 1976)

<sup>12</sup> See *NCTA v. United States*, 415 U.S. at 341.

cast doubt on the proposition that the assessment was “well apportioned.”<sup>13</sup> The FCC represented to the court that it assessed the challenged fees in order to recover the costs that it incurred in overseeing the Company in its role as the U.S. signatory to INTELSAT.<sup>14</sup> However, the D.C. Circuit pointedly observed that the “fees assessed to COMSAT seem to bear no relation to the signatory-related costs that the Commission identified COMSAT as having created and that it has said it wishes to recover.”<sup>15</sup>

Materials provided by the Commission in response to FOIA requests for Fiscal Years 2000 and 2001 indicate that the fees for those fiscal years exceeded actual COMSAT-related costs by factors of three and four, respectively.<sup>16</sup> Fees so grossly disproportionate to costs clearly do not satisfy the “reasonable relationship” standard. It is COMSAT’s belief that similarly inflated regulatory fees were imposed on the company for FY 1998. Absent some “reasonable relationship” to costs, these fees violate Section 9.

As noted above, the history of litigation over regulatory fees for COMSAT has led the Commission to assess signatory-related fees on COMSAT through the agency’s space station fee category. Without an appropriate adjustment to reflect COMSAT’s actual regulatory costs, however, the Commission’s methodology is doomed to misstate COMSAT’s liability—this is so because it does not account for the fact that COMSAT’s signatory-related costs are but a small

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<sup>13</sup> 283 F.3d at 349.

<sup>14</sup> See FCC Resp. Br. at 33, COMSAT II (No. 00-1458) (“[T]he costs attributable to space station oversight include costs directly related to Intelsat signatory activities.”). See also *COMSAT II*, 283 F.3d at 347 (quoting *FY 2000 Order* at 14489 ¶ 24).

<sup>15</sup> 283 F.3d at 349.

<sup>16</sup> Signatory-related costs for Fiscal Year 2000 were \$564,082, while fees imposed on COMSAT were \$1,609,050, a mark-up of 285%, for Fiscal Year 2001, costs were \$370,476 but fees imposed were \$1,668,125, a mark-up of 450%. See Letter of Lawrence W. Secrest, III, Esq., to Marlene Dortch, Secretary, MD Dkt. No. 01-76 (dated Oct. 7, 2002) (submitting copy of FCC’s response to request under Freedom of Information Act for agency data on costs of regulating COMSAT’s use of INTELSAT satellites).

portion of all costs recovered by that fee category.<sup>17</sup> When the Commission attempts to account for COMSAT's costs by sweeping them into the space station fee category, the agency combines signatory-related costs with space station costs for a given fiscal year, then divides those costs by the number of space stations regulated in that year, and charges regulatees a fee on a per-station basis. By spreading the signatory and space station costs over all space station licensees and COMSAT, on a pro rata basis, the Commission might accurately assess COMSAT's liability only by sheer serendipity. But based on the details released to date, it appears that the FCC is imposing an inflated fee assessment that, in fact, forces COMSAT to cross-subsidize its competitors by paying for regulatory costs that they—not COMSAT—caused and properly should bear. To right the wrong, the Commission must devise a system of fee assessment that is designed to produce an amount approximating the actual regulatory costs generated by COMSAT.

Granting COMSAT's request for reduction and refunding the excessive fees collected will not set precedent that could be used by future regulatees. As the Commission well knows, COMSAT was a unique corporate creature—chartered by Congress during the Kennedy Administration to establish the world's first commercial communications satellite system, which became INTELSAT. Since the 1960s, a number of competing commercial satellite systems have emerged, some of which are licensed by the United States while others are regulated by foreign authorities. Because of marketplace developments, the former IGO privatized in the second half of 2001 and now operates as a conventional private company which holds U.S. satellite licenses

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<sup>17</sup> The D.C. Circuit in *COMSAT II* notes the FCC's 1996 estimate that signatory-related costs amounted to 14.7% of the costs attributable to space station regulatory oversight. 283 F.3d at 349.

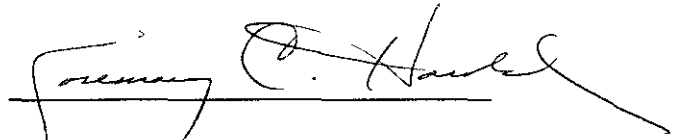
for the Intelsat facilities and pays the Commission's space station regulatory fees accordingly.<sup>18</sup> In addition, Intelsat acquired COMSAT's portfolio of Intelsat-based business assets in 2002; today, neither Lockheed Martin nor COMSAT provide satellite-based communications services to customers via the Intelsat system. In short, the necessity for fee reductions compelled by COMSAT's unique status ended in FY 2002.

For the reasons set forth above, the Commission should reduce the regulatory fees imposed upon COMSAT for FY 1998 to a level reasonably related to the actual costs that the agency incurred in regulating COMSAT during that fiscal year and, accordingly, refund the excessive fees that the company has remitted.

Respectfully submitted,

Lockheed Martin Corporation  
COMSAT Corporation

By:



Lawrence W. Secrest, III  
Rosemary C. Harold  
Nia C. Mathis  
WILEY, REIN & FIELDING, LLP  
1776 K St. N.W.  
Washington, D.C. 20006

Its Attorneys

July 14, 2003

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<sup>18</sup> See *Applications of Intelsat LLC, Memorandum Opinion and Authorization*, 15 F.C.C. Rcd 15460 (2000), reconsideration denied, *Intelsat LLC, Order on Reconsideration*, 15 F.C.C. Rcd 25234 (2000).



Wiley Rein & Fielding LLP

1776 K STREET NW  
WASHINGTON, DC 20006  
PHONE 202 719 7000  
FAX 202 719 7049

Virginia Office  
7925 JONES BRANCH DRIVE  
SUITE 6200  
MCLEAN, VA 22102  
PHONE 703 905 2800  
FAX 703 905 2820

www.wrf.com

July 14, 2003

Rosemary C. Harold  
202.719.4901  
rharold@wrf.com

Andrew S. Fishel  
Managing Director  
Federal Communications Commission  
Revenue & Receivables Operations  
P.O. Box 358835  
Pittsburgh, PA 15251-5835  
*Attn: Petitions*

**Re: Comsat Corporation FY 1998 Regulatory Fees  
Bill No. FY03RROG01  
Payer's FCC Registration Number: 0006789507**

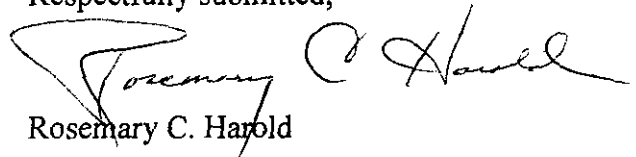
Dear Mr Fischel:

By its undersigned attorney, Lockheed Martin Corporation and its subsidiary COMSAT Corporation (collectively "COMSAT"), herewith submit a check in the amount of \$1,876,800 in response to your letter and billing statement of June 13, 2003 concerning the geosynchronous space station regulatory fees assessed against COMSAT for Fiscal Year 1998. These fees are being submitted under protest. Accompanying this submission is a copy of COMSAT's Petition for Reduction and Refund of the FY 1998 fees, which is being filed contemporaneously with your office under separate cover. In conjunction with that Petition, COMSAT today also is submitting under separate cover a request under the Freedom of Information Act to obtain documents relating to Signatory and space station regulatory fees assessed against COMSAT for fiscal years 1998 and 1999.

Please date-stamped the enclosed duplicate of this submission and return it to us via the messenger for our records.

Should any questions arise concerning this matter, kindly contact the undersigned.

Respectfully submitted,



Rosemary C. Harold

cc: Bryan Tramont (via e-mail)  
Susan H. Steiman (via e-mail)  
Claudette E. Pride (via e-mail)



**FOR INQUIRIES CALL**  
1-202-418-1995

ROBERT A MANSBACH  
LOCKHEED MARTIN GLOBAL TELECOMMUNICATIONS  
6560 ROCK SPRING DRIVE  
BETHESDA, MD 20817

7/14/03

DATE \_\_\_\_\_



Wiley Rein & Fielding LLP

1776 K STREET NW  
WASHINGTON, DC 20006  
PHONE 202.719.7000  
FAX 202.719.7049

Virginia Office  
7925 JONES BRANCH DRIVE  
SUITE 6200  
McLEAN, VA 22102  
PHONE 703.905.2800  
FAX 703.905.2820

www.wrf.com

July 14, 2003

Rosemary C. Harold  
202.719.4901  
rharold@wrf.com

**VIA HAND DELIVERY**

Andrew S. Fishel  
Attention: FOIA Officer  
Federal Communications Commission  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, D.C. 20002

Re: **FREEDOM OF INFORMATION ACT REQUEST**

Dear Mr. Fishel:

By its undersigned attorney, Lockheed Martin Corporation and its subsidiary COMSAT Corporation (collectively "COMSAT") hereby submit an original and two copies of the following Freedom of Information Act request pursuant to 5 U.S.C. § 552 and 47 C.F.R. §§ 0.441-0.470 to obtain documents relating to Signatory and space station regulatory fees assessed against it for fiscal years 1998 and 1999. The regulatory fees were established in the following orders:

- *Assessment and Collection of Regulatory Fees for Fiscal Year 1998, Report & Order*, 13 F.C.C. Rcd 19820 (1998) and
- *Assessment and Collection of Regulatory Fees for Fiscal Year 1999, Report & Order*, 14 F.C.C. Rcd 9868 (1999).

This request follows a similar FOIA request dated May 6, 2002, in which COMSAT asked for information related to the Commission's determination of regulatory fees assessed against COMSAT in connection with its use of space stations owned and operated by INTELSAT for the fiscal years 1996, 2000, and 2001. COMSAT now seeks similar information for the fiscal years 1998 and 1999.

Specifically, please provide the *Cost Regulatory Fee Summary Reports S/E Rollup by Non Reimbursable Projects* for the following projects: Signatory to Inmarsat and INTELSAT, Direct Broadcast Satellite, and Low Earth Orbiting Satellite. Please provide all documents – including all facts, figures, calculations, assumptions, explanations of methods, and conclusions – containing or reflecting information regarding:

- a) cost of authorization of service,

Wiley Rein & Fielding LLP

Andrew S. Fishel  
July 14, 2003  
Page 2

- b) policy and rule making costs,
- c) enforcement costs, and
- d) cost of public information services.

In addition, for the fiscal years represented above, please include any and all information regarding:

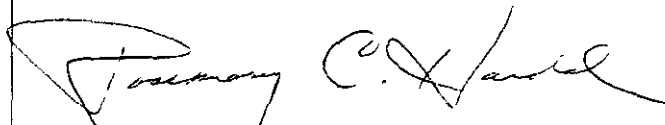
- (1) The Commission's determination of the total geostationary space station and/or Signatory fee, including all component parts of this fee relating to COMSAT;
- (2) The Commission's determination of the portion of the geostationary space station fee attributable to regulatory oversight of COMSAT and/or COMSAT's role as Signatory to INTELSAT and Inmarsat-related activities, as applicable.

This request should be interpreted to include documentation of any other costs that the Commission purported to capture in its regulation of COMSAT and COMSAT's Signatory-related activities. This request also includes, but is not limited to, all print and electronic data that reflects the information requested.

The undersigned has reviewed the FOIA exemptions set forth in 5 U.S.C. § 552(b)(1)-(5) and further described in 47 C.F.R. § 0.457, and in good faith believes that none of these exemptions prohibits the disclosure of the requested information.

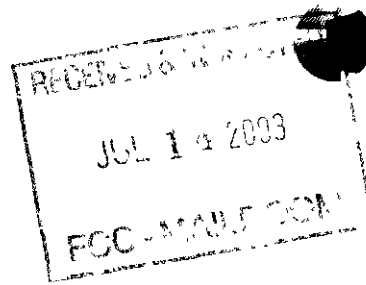
The undersigned authorizes the Commission to spend up to \$1,000.00 in searching for and duplicating documents responsive to this request. Please contact the undersigned at 202.719.4901 if advance payment is required.

Respectfully submitted,



Rosemary C. Harold

July 7, 2003



**Intelsat.**  
inspiring connections

Legal Department

Ms Claudette Pride  
Chief,  
Commercial & Receivables Operations Group  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W  
Washington, D C 20554

RE. Bill No. FY03RROG01

Dear Ms Pride,

This is in reference to your letter dated June 13, 2003 addressed to me at Lockheed Martin Global Telecommunications related to the above-noted Bill No Please note that I am no longer employed by Lockheed Martin Global Telecommunications

To best facilitate a response in this or other matters, letters from the Commission related to Lockheed Martin Global Telecommunications, COMSAT Corporation/COMSAT World Systems or COMSAT General Corporation should be directed to Marian S Block, Vice-President and Assistant General Counsel, Lockheed Martin Corporation, 6801 Rockledge Drive, Bethesda, Maryland 20817 Would you please change your records, accordingly

Thank you

Sincerely,

Robert A Mansbach

**RECEIVED JUL 24 2003**

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7/24/2003  
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RAMIS ACCOUNTS RECEIVABLE - (c) DSG, Inc.  
RECEIPTS IN SUSPENSE REPORT  
SORTED BY TRANSACTION DATE, CD No , FEE CONTROL No.

PAGE 1  
7/24/2003  
10:52 47

CD No.	CD DATE	FEE CONTROL No.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
560759	7/15/03	0307158835255001	9999999982	GENERIC FRN	7/14/03	\$1,876,800 00

Seq' 1 Call Sign FY03RR0G01 FCC Code 1:  
PTC. CSG8 QTY: 1 Applied Amt: FCC Code 2. 119000 00  
Applicant Name MANSBACH, ROBERT A  
Address: 6560 ROCK SPRING DRIVE  
Tin Number: 0000000000

Total: \$119,000.00

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of  
  
COMSAT Corporation FY 1998  
Regulatory Fees

)  
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Bill No. FY03RROG01  
**RECEIVED - FCC**

**ORIGINAL**

**JUL 14 2003**

To: The Managing Director

Federal Communication Commission  
Bureau/Office

**PETITION FOR REDUCTION AND REFUND OF REGULATORY FEES**

By their undersigned attorneys and pursuant to Section 9(d) of the Communications Act, 47 U.S.C. § 159(d), and Rule 1.1166 of the Commission's rules, 47 C.F.R. § 1.1166, Lockheed Martin Corporation and its subsidiary COMSAT Corporation (collectively "COMSAT") hereby petition the Commission for reduction of the amount of Section 9 "space station" regulatory fees assessed against COMSAT for Fiscal Year ("FY") 1998 and for a consequent refund of excessive fees paid. Under separate cover, COMSAT is submitting under protest a payment of \$1,876,800 in response to the bill for FY 1998 presented by letter dated June 13, 2003 from the Revenue and Receivables Operations Group of the Office of the Managing Director ("OMD"). See FCC Bill No. FY03RROG01 (dated June 13, 2003) (the "June bill").<sup>1</sup>

The Commission is authorized to reduce a regulatory fee assessment where good cause to do so is shown. 47 U.S.C. § 159(d); *see also* 47 C.F.R. § 1.1166. The fees assessed via the June bill are significantly in excess of the actual costs that the Commission incurred in regulating COMSAT in FY 1998. Because this assessment "seem[s] to bear no relation" to the costs that the agency has consistently identified through the years as that which it wishes to recover,

<sup>1</sup> Payment of the assessed fees does not constitute a waiver or relinquishment of COMSAT's rights to pursue and obtain a refund of monies paid. See 47 C.F.R. § 1.1166(d)

**RECEIVED JUL 23 2003**

*COMSAT Corp. v. FCC*, 283 F.3d 344 (D.C. Cir. 2002) (“*COMSAT I*”), good cause exists to reduce the FY 1998 fees to a level commensurate with those costs. Indeed, as discussed below, the Commission lacks authority to impose a fee on COMSAT that is not reasonably related to the costs the agency can identify for regulating the company in a given fiscal year. Granting the reduction and refund requested here would therefore eliminate any doubts as to the legality of the FY 1998 fee assessment under *COMSAT II*.

The Commission’s records will reflect that the issue of imposing appropriate regulatory fees on COMSAT in connection with its usage of satellites owned by the former intergovernmental organization (“IGO”) known as INTELSAT (now privatized as Intelsat, Ltd.) has a complicated history.<sup>2</sup> The Commission has repeatedly identified the costs of regulating COMSAT in its role as INTELSAT signatory—*i.e.*, its function as the U.S. representative to INTELSAT and its usage of INTELSAT satellites to serve U.S. customers—as the costs that it seeks to recover through these regulatory fees.<sup>3</sup> Yet because the Commission is barred by law from assessing a “signatory” regulatory fee against COMSAT,<sup>4</sup> the agency has sought in recent years to recoup its costs by assessing fees against the company through the category of space station fees. That category, however, was designed to assess fees to recover the costs of regulating U.S. satellite licensees. The activities of satellite licensees generate a completely different type of costs than did the signatory activities of COMSAT. It is not surprising, therefore, that the FY 1998 fee assessment against COMSAT, which was calculated pursuant to a

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<sup>2</sup> See *COMSAT Corp. v. FCC*, 114 F.3d 223 (D.C. Cir. 1997) (“*COMSAT I*”); *PanAmSat Corp. v. FCC*, 198 F.3d 890 (D.C. Cir. 1999), *COMSAT II*, 283 F.3d 344.

<sup>3</sup> See *COMSAT II*, 283 F.3d at 349, *id.* at 347 (citing *Assessment and Collection of Regulatory Fees for Fiscal Year 2000*, 15 FCC Rcd 14478, 14485-90 (2000)); *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, 16 FCC Rcd 13525, 13534 (2001), *see also Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, 11 FCC Rcd 18774, 18787-91 (1996) (discussing same costs under rubric of “signatory fee”).

<sup>4</sup> *COMSAT I*, 114 F.3d at 227-28.

methodology that combined COMSAT's signatory-related costs with the general costs of regulating space stations and then spread those costs over all space station licensees and COMSAT, bears no reasonable relationship to the unique costs that the Commission actually incurred in regulating COMSAT.

The Commission should reduce the COMSAT fee assessment for FY 1998 to a level commensurate with its identifiable costs.<sup>5</sup> Doing so for that fiscal year—as with the other fiscal years for which COMSAT is seeking similar fee reductions and refunds—will ensure that the agency does not exceed its authority under Section 9.<sup>6</sup> That provision authorizes the Commission to “assess and collect regulatory fees *to recover the costs of* ...enforcement activities, policy and rulemaking activities, user information services, and international activities.”<sup>7</sup> Section 9 clearly defines regulatory fees as a cost-recovery mechanism, or a means of obtaining compensation for costs actually incurred. It is not a mechanism for generating revenues.

While there is no case law defining the precise boundaries of “fees to recover costs” under Section 9, the Commission should be guided by the substantial and persuasive precedent relating to regulatory fees imposed under the Independent Offices Appropriations Act (“IOAA”), 31 U.S.C. ¶ 9701 (establishing “fees and charges for Government services and things of value.”)

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<sup>5</sup> COMSAT is contemporaneously filing a request under the Freedom of Information Act to obtain Commission data concerning the costs of regulating the company's usage of the INTELSAT satellite system in Fiscal Years 1998 and 1999. See Letter of Rosemary C. Harold, Esq., to Andrew S. Fishel, FOIA Officer (dated July 14, 2003) (copy attached)

<sup>6</sup> Requests are pending for reduction of the space station regulatory fees assessed against COMSAT for FY 2000 and FY 2001. See Letter of Robert A. Mansbach, Asst. General Counsel, COMSAT Corporation, to Andrew S. Fishel, Managing Director (dated Sept. 24, 2001); Letter of Lawrence W. Secrest, III, Esq., to Marlene Dortch, Secretary, MD Dkt. No. 00-58 (dated May 6, 2002); Letter of Lawrence W. Secrest, III, Esq., to Marlene Dortch, Secretary, MD Dkt. No. 01-76 (dated May 6, 2002).

<sup>7</sup> 47 U.S.C. 159(a)(1)(emphasis added)



Recovery of fees under the IOAA is governed by two Supreme Court cases. In *NCTA v. United States*, 415 U.S. 336 (1974), the Court reversed the FCC's cable regulatory structure and held that the recovery of fees under IOAA must be limited to the benefit received by the regulated entity, not the general social benefit of the regulation.<sup>8</sup> In *Federal Power Comm'n v. New England Power Co.*, 415 U.S. 345 (1974), the Court held that fees under the IOAA must be based on the cost of specific services rendered to specific parties.<sup>9</sup> Following these decisions, the U.S. Court of Appeals for the D.C. Circuit held that a "fee may not exceed the agency's costs of providing the service."<sup>10</sup> Although courts "do not demand precise equality," a fee must be "reasonably related to the cost of the services that benefit the individual recipients who are being charged."<sup>11</sup>

Section 9, unlike the IOAA, explicitly provides that the Commission is authorized to collect "fees to recover costs." If cases under the IOAA limited fees to cost recovery, then there should be no question that fees under Section 9 must be tied to costs, as the plain terms of the statute provide. Any other reading of the term "fee" would implicate the power to tax, which is traditionally reserved to Congress, and thus create problems of constitutional dimension.<sup>12</sup>

When the validity of the space station regulatory fee assessed against COMSAT for FY 2000 was before the D.C. Circuit, the court questioned the relationship between the fees and costs. In *COMSAT II*, the D.C. Circuit determined that the Commission was authorized to impose fees on COMSAT for its use of the INTELSAT facilities, but it went out of its way to

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<sup>8</sup> 415 U.S. at 341

<sup>9</sup> 415 U.S. at 349

<sup>10</sup> *Central & Southern Motor Freight Tariff Ass'n v. ICC*, 777 F.2d 722, 729 (1985).

<sup>11</sup> *NCTA v. FCC*, 554 F.2d 1094, 1108 (D.C. Cir. 1976)

<sup>12</sup> See *NCTA v. United States*, 415 U.S. at 341